IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3487 OF 1999

M/s.V.R.Marathe ...Petitioner

Vs.

Mr.R.R.Karandikar & Ors. ...Respondents

Mr.R.S.Apte for the Petitioner.
None for for the Respondents.

CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL,JJ.

DATE :- 19TH SEPTEMBER,2006

P.C.

1. Heard Mr.R.S.Apte, the learned Counsel for the Petitioner, who was admittedly the Developer and Builder of building consisting of 18 flats in Sridhar Nagar area of Chinchwad city. After the plans were sanctioned, he had applied for revised plans and thus he has converted flat Nos.1 and 2 on the ground floor in 4 shops during the period from 21st October, 1989 to 1st August, 1992 and these shops were sold to one Dr.Mrs.Deshmukh, who has started her maternity home therein. The present Respondents had filed a complaint against the Petitioner for deficiency in service and the same was registered as Case No.53 of 1995 before the Additional District Consumer Disputes Redressal Forum at Pune. The complaint was initially allowed and as the order was not obeyed, Execution Application No.48 of 1996 was filed and directions were issued in the Execution Proceedings. Aggrieved by the orders passed in Complaint No.53 of 1995 as well as Execution Proceeding No.48 of 1996, the Petitioners filed Appeal Nos.485 of 1997 and 487 of

1997. Both these Appeals were heard together by the Consumer Disputes Redressal Commission, Maharashtra State and by a common order dated 29th September, 1998, the Appeals were allowed partly by quashing the orders passed in Complaint No.53 of 1995 and Execution Application 48 of 1996. By remanding the complaint for fresh disposal according to law, the District Forum was directed to allow the parties to lead their evidence, tender documents and call for the report of an Architect and then decide the matter.

2. On remand, the Additional District Consumers Disputes Redressal Forum appointed one Mr.Sunil Kulkarni, Architect as Court Commissioner and he visited the suit building i.e. Vandan Apartments, Chinchwad and submitted his report pointing out the difficulties and the likely amount of repair charges i.e. Rs.4,05,600/- on the basis of the estimate submitted by Nakul Constructions on 5th February, 1999. The said report was objected to by the Petitioner by his letter dated 12th January, 1999 addressed to the Court Commissioner as well as by filing his say before the District Forum.

3. The Additional District Forum by its judgment and order dated 13th May, 1999, allowed the complaint and directed the present Petitioner to pay an amount of Rs.2,50,000/- to the Complainant within one month and in default to pay interest on the said amount at 18% p.a. from the date of the complaint i.e. 15th July, 1993, besides suffering an action under Section 27 of the Consumer Protection Act. This order was

challenged afresh in Appeal No.1055 of 1999 and the Appeal was dismissed by the Bench of three members of the Consumer Disputes Redressal Commission, Maharashtra State on 11th June, 1999. Hence, this Petition.

4. Mr.R.S.Apte, the learned Counsel for the Petitioner submitted that the appointment of the Court Commissioner and consequently his report submitted to the Additional District Forum was in violation of the principles of natural justice. The complaint was filed belatedly and in any case, the Petitioner could not have been fastened with any liability to pay an amount for undertaking the repairs at the instance of the Complainant. He also pointed out that consequent to the orders passed by this Court on 24th June, 1999, the Petitioner has deposited an amount of Rs.1,75,000/- with the Additional District Forum at Pune.

5. On the point of limitation, the District Forum has dealt with the same at length and in our considered opinion, quite appropriatly. It has been noted that three years period had expired on 20th October, 1992 to complete the construction and thus the complaint could have been filed on or before 20th October, 1993. At the same time, it was also noted that the Petitioner, by his own letter dated 20th March, 1992 had acknowledged his liability to form a Society for the Flat Owners or the Shop Owners and in response to the communication by Dr.Deshmukh, the Petitioner addressed a letter dated 23rd May, 1994.

Even otherwise, the Petitioner by his own acts extended the period of limitation. Be that as it may, the Forum itself has noted that the complaint itself has been filed on 15th July,1993 and the limitation could have expired on 20th October,1993. Hence, the issue of limitation did not come in the way of entertaining the complaint by the Additional District Forum.

6. So far as the Court Commissioner's report is concerned, it would be necessary for us to consider the order passed by the State Commissioner on 29th September, 1998 while allowing the Application of the Petitioner. The complaint was remanded to the District Forum for its disposal according to law and by giving the parties liberty to adduce evidence, tender documents and call for the report of the Architect, so as to decide the complaint afresh. Consequently, the Additional District Forum appointed Mr.Sunil Kulkarni, Architect as a Court Commissioner. It is clear that the copy of his report was made over to the Petitioner and he has submitted his say to the said report before the Court as well as addressed the letter dated 12th January, 1999 objecting to the said report. He was heard by the Additional District Forum before passing the order dated 13th May, 1999 allowing the complaint. We therefore, do not see any reason to hold that the principles of natural justice were violated in considering the Court Commissioner's report. The State Forum in the impugned order dated 11th June, 1999 rightly noted that though the valuation was submitted at Rs.4,05,600/- the District

Forum granted an amount of Rs.2,50,000/- and this clearly shows that the District Forum was not influenced by the so called estimate submitted by the Court Commissioner. The District Forum applied its mind and reduced the valuation amount to Rs.2,50,000/- for undertaking the repairs. The State Commission also noted that the parties were invited and quantification was done behind the back but at the same time it was not a very serious illegality or mis carriage of justice and therefore in the facts and circumstances of the case, the State Forum did not find any reason to admit the Appeal and it was dismissed in limine.

7. The approach of the State Commission or that of the Additional District Forum cannot be termed as perverse or manifestly erronious so as to call for interference under our supervisory powers and hence, the Petition fails at the threshold.

8. The Petition is hereby rejected summarily. The amount deposited be allowed to be withdrawn by the Complainants. Mr.Apte submits an oral application for extension of interim relief. The application is hereby rejected.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE,J.)**